IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

INCOME TAX APPEAL NO.1270 OF 2000

The Commissioner of Income-tax,
Central-II, Mumbai Appellant

vs.

M/s.Mazda Industries & Leasing Ltd.,Mumbai Respondent

Mr. K. R. Chaudhary i/b. M/s. R. N. Bandopadhyay for the appellant.

CORAM : R.M. LODHA &
J. P. DEVADHAR,JJ.

Date : 12h August 2004

P.C.:

Heard Mr. Chaudhary, the learned counsel for the revenue.

2. The Tribunal in its order considered the matter thus:

> "3. On due consideration of the matter, we agree with the view taken by the CIT(A). By allowing depreciation at 30% AO is not disputing that the assessee is the owner of the assets. What remains is the user of the asset. It is not disputed that the asset is used for running it on hire. Item IIIE(1A) clearly mentions that the asset specified therein used in a business of running them on hire will command a depreciation at 40%. On the fact that M/s. Urmila was running it hire, CIT (A) was justified in allowing the claim of the

assessee. We uphold the same.

4. Next ground in the appeal is against allowing depreciation on assets given on hire purchase basis. The claim was made on the ground that the ownership of these assets denied with the assessee and that depreciation had not been claimed by the hirers and that they had the option to purchase the asset after the expiry of the term of hire purchase on payment of Rs. 1/-. AO observed that the assets given on hire purchase had been shown as stock-in-trade by the assessee in its balance sheet. According to him, therefore, the question of giving depreciation on assets shown as stock-in-trade did not arise. CIT (A) accepted the claim of the assessee on the ground that the title of the asset remained with the assessee till the option was exercised by the hirer.

5. We have carefully considered the matter. It is law that accounting entry does not determine the allowability or otherwise of an expenditure under the Income Tax Act. The assessee may have classified the assets given on hire purchase basis as stock in trade on the basis of accounting principles and/or convenience. However, the fact remains that these are capital goods on which depreciation is allowable and the fact that hirer have not claimed the depreciation thereon, would entitle the assessee to claim depreciation. It is also noteworthy that in case of motor trailors, AO himself has allowed depreciation to the assessee. Thus, there is no reason to attach the double stands and hence we uphold the order of the CIT(A) to allow depreciation on assets given on hire purchase basis."

3. The consideration of the mater by the Tribunal does not suffer from any error of law.

4. No substantial question of law arises in this appeal.

5. The appeal is dismissed in limine.

(R. M. LODHA, J.)

(J. P. DEVADHAR,J.)